

Gold Book Text – Updated 02-14-06

Exploration and Development on Split Estates

Non-Federally Owned Surface/Federally Owned Minerals

The operator should contact the private surface owner before entering private surface to stake a well location and access road or to conduct cultural or biological surveys. Each APD, NOS, or Sundry Notice permitting new surface disturbing activities must contain the name, address, telephone number, and e-mail address (if available), of the private surface owner.

The BLM will invite the surface owner to participate in the onsite and final reclamation inspections and will take into consideration the needs of the surface owner when reviewing the APD and approving final abandonment and reclamation. The BLM will offer the surface owner the same level of surface protection that the BLM provides on Federal surface. The BLM will not apply standards or conditions that exceed those that would normally be applied to Federal surface, even when requested by the surface owner.

Prior to approval of the APD (or Sundry Notice to conduct new surface disturbing activities), the operator must certify as part of the complete application that a good faith effort has been made to reach an agreement with the private surface owner. If the surface owner and operator fail to reach an agreement, the operator must file a bond with the BLM (amount to be determined by the BLM, but a minimum of \$1,000) for the benefit of the surface owner to cover compensation for reasonable and foreseeable loss of crops and damages to tangible improvements. The BLM will advise the surface owner of appeal rights and will review the value of the bond if the surface owner appeals.

The operator is strongly encouraged to negotiate an agreement with the surface owner. Negotiating an agreement in good faith provides a forum through which the operator and surface owner can discuss the preferences and needs of the surface owner. In addressing those needs, the operator may be able to modify the development proposal to minimize reclamation and surface damage costs. These costs can be minimized by placing roads and facilities in locations that the surface owner can use, thereby lessening the reclamation obligations of the operator.

The agreement between the surface owner and the operator is confidential, and neither the surface owner nor the operator is required to provide the details of the agreement to the BLM or other agencies. However, the APD Surface Use Plan of Operations should contain sufficient detail about any aspects of the agreement necessary for NEPA documentation and to determine that the operations will be in compliance with laws, regulations, Onshore Orders, and agency policies.

The BLM may need additional cultural resources, sensitive or threatened and endangered species, or other resource survey information in order to comply with the NHPA, the ESA, or to complete an environmental analysis under NEPA. For surveys completed by the operator, the operator will be responsible for making access arrangements with the surface owner.